in transactions with third persons. *Brown & McCabe* v. *London, etc. Co., supra.* On the other hand, unless it appears that the insurer was actuated by motives other than that of self-protection, no action will lie against it, *cf. Wisconsin Zinc Co.* v. *Fidelity, etc. Co.* (1916) 162 Wisc. 39, 155 N. W. 1081, and it is on this hypothesis that the principal case may be sustained.

INSURANCE—WAR RISK—PERILS OF THE SEA.—A vessel insured against war risks but not against perils of the sea was boarded by an English naval officer and compelled to proceed by a course from which the aids to navigation had been removed for war purposes. The ship was subsequently wrecked. *Held,* that the loss was caused by a war risk. *Muller* v. *Globe & Rutgers Fire Ins. Co.* (2 C. C. A. 1917) 246 Fed. 759.

In determining whether a loss is caused by war risk or peril of the sea, only the proximate and not the remote cause is considered, see *France* v. *North of England, etc. Ass'n.* [1917] 2 K. B. 522, *Ionides* v. *Universal Marine Ins. Co.* (1863) 14 C. B. (N. S.) 259. Proximate cause is in all such cases purely a question of fact. *Donegan* v. *Baltimore, etc. Ry.* (C. C. A. 1908) 165 Fed. 869. Generalizations are therefore difficult to make, and it is only from an examination of the decided cases that it can be discovered what the courts mean by proximate cause. For example, the seizure of a ship in consequence of hostilities is a loss due to war risk regardless of the fact that the ship is subsequently destroyed through perils of the sea, *Andersen* v. *Marten* [1908] A. C. 334, see *Magoun* v. *New England Marine Ins. Co.* (1840) 16 Fed. Cas. No. 8961; a loss by collision due to absence of navigation lights in pursuance of admiralty instructions is due to war risk. *British, etc. Co.* v. *Rex* [1917] 2 K. B. 769. On the other hand it has been held that the mere increase of sea peril by removal for belligerent purposes of aids to navigation affords no basis for recovery as from loss due to war risk, *Ionides* v. *Universal Marine Ins. Co., supra,* probably, as the court in the principal case points out, on the ground that such act merely restores the perils of the sea to their normal; and recovery was denied where it was shown that the aids to navigation would have been of no avail had they been present. *Le Quellec* v. *Thomson* (1916) 115 L. T. R. (N. S.) 224. It has also been held that damage to a vessel caused by its running on the wreck of another vessel torpedoed by an enemy submarine was due to perils of the sea, and not to war risk, the torpedoing being a cause too remote. *France* v. *North of England Ass'n., supra.* It seems that the general rule, so far as there is one, is that "the hostile agency first in operation gives character to the whole connected catastrophe", Richards, Insurance (3rd ed.) § 441; *cf. Insurance Co.* v. *Boon* (1877) 95 U. S. 117, and that the court in principal case properly applied this test.

JUDGMENTS—DISMISSAL BY AGREEMENT—PLEAS IN BAR.—The plaintiff sued the defendant for damages for personal injury. The defendant pleaded in bar a former judgment which dismissed the cause by agreement of the parties, the defendant paying costs. *Held,* the judgment of dismissal operated as a bar to a subsequent action on the same cause. *Doan* v. *Bush* (Ark. 1917) 198 S. W. 261.

As a general rule the mere voluntary dismissal of an action by the plaintiff is not a bar to a subsequent suit brought on the same cause. Freeman, Judgments (3rd ed.) § 261. To make the judgment of dismissal *res judicata* it is necessary that it be entered either on the merits

of the case or because of a voluntary *retraxit* on the part of the plaintiff. See *Merritt* v. *Campbell* (1874) 47 Cal. 542. A dismissal by agreement can be pleaded in bar if the parties stated in the agreement that it should be a bar. *Heironymous* v. *Heironymous* (1884) 64 Iowa 81, 19 N. W. 855. But where the agreement itself is not offered in evidence, the majority rule is that the mere words in a judgment "dismissed by agreement" conclusively show that the parties intended the dismissal to operate as a final settlement of the case, and as a result, to act as a bar to a subsequent suit. *Hoover* v. *Mitchell* (1874) 66 Va.* 387; *Bank of the Commonwealth* v. *Hopkins* (1834) 32 Ky. *395; *contra, Haldeman* v. *United States* (1875) 91 U. S. 584; *State, etc. Board* v. *Stewart* (1907) 46 Wash. 79, 89 Pac. 475. This inference seems unfounded, as the parties may have intended merely an agreement to dismiss pending an attempt to settle the controversy out of court, or they may have agreed only to an extension of time for the defendant. No presumption of a final settlement can rightly be raised by the words "dismissed by agreement", nor from the fact that the defendant also agreed to pay costs. See *Haldeman* v. *United States, supra*; but see *Phillpotts* v. *Blasdel* (1874) 10 Nev. 19. The majority rule seems to be based on an unwarranted inference, and in the instant case, therefore, the plea in bar should have been held bad.

LIMITATION OF ACTIONS—OPERATION OF STATUTE ON ONE CAUSE OF ACTION DURING PENDENCY OF ANOTHER—PROTECTION AFFORDED IN EQUITY.—The plaintiff sought to enjoin suit on a promissory note which he had given to the defendant in settlement of a tort claim. It was found that the note had been given as a result of the undue influence of third parties, but that the defendant had acted in good faith. The injunction was granted, but the defendant's original cause of action in tort was retained to be tried as a law action in order to prevent the bar of the Statute of Limitations. *Macke* v. *Jungels* (Neb. 1918) 166 N. W. 191.

Since statutes of limitations are in derogation of vested rights otherwise enforcible, they will be construed strictly against the party setting up a defense under them, Endlich, Interpretation of Statutes 343, and exceptions thereto will be construed liberally. *Gaines* v. *New York* (1915) 215 N. Y. 533, 109 N. E. 594. Thus the statute does not run against a cause of action while it is being sued upon; Wood, Limitations (4th ed.) § 253a; and there are generally provisions permitting a plaintiff to recommence an action which has been dismissed otherwise than on the merits, N. Y. Code Civ. Proc. § 405; Page & Adams, Ohio Gen. Code § 11233, unless he has acted in bad faith. *Hardin* v. *Coss County* (C. C. A. 1890) 42 Fed. 652. Some statutes contain provisions suspending their operation where the cause of action has been fraudulently concealed by the defendant, Park's Ga. Civ. Code § 4380, and independently of legislative enactment the courts, especially courts of equity, have reached the same results. 5 Columbia Law Rev. 403. Similarly, where the defendant has by fraudulent means induced the plaintiff to permit the statutory period to run, he will not be allowed to set up the Statute of Limitations as a defense. *Barnett* v. *Nichols* (1879) 56 Miss. 622. Although in the principal case, there was no fraudulent conduct on the part of the defendant, the plaintiff on the other hand was justified in relying on the note, and it would seem proper for a court of equity to grant an injunction upon condition that the Statute of Limitations be not pleaded as a bar in a suit on the original cause of